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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

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In the Matter of )

CC Docket No. 93-129

800 Data Base Access Tariffs and )  
the 800 Service Management System )  
Tariff and Provision of 800 Services )  
)

CC Docket No. 86-10

**RESPONSE TO PETITIONS FOR RECONSIDERATION**

**I. INTRODUCTION**

On October 28, 1996, the Federal Communications Commission's ("Commission") released its Report and Order ("Report and Order")<sup>1</sup> in the above-captioned proceeding resolving issues that had been pending before the Commission since the issuance of its Order in April of 1993, which among other issues, partially suspending the 800 access service tariffs originally filed in March of 1993, by the Sprint operating telephone companies ("Suspension Order").<sup>2</sup> On November 27, 1996, MCI Telecommunications Corporation ("MCI") and AT&T Corporation ("AT&T") filed their respective petitions for reconsideration of the Commission's Report and Order. MCI and AT&T both raise the same issue in their filings - that the Commission erred in not ordering a refund in this case pursuant to Section 204(a)(1) of the Communications Act of

<sup>1</sup> 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, Report and Order, CC Docket Nos. 93-129 and 86-10, adopted September 26, 1996, released October 29, 1996 ("Report and Order").

<sup>2</sup> In the Matter of the Bell Operating Companies' Tariff for the 800 Service Management System, Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, CC Docket no. 93-129, adopted April 27, 1993, released April 28, 1993, 8 FCC Rcd 3242 ("Suspension Order").

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1934 (the "Act").<sup>3</sup> Sprint Corporation ("Sprint"), on behalf of its local operating telephone companies, hereby files its response to the petitions for reconsideration. Sprint asserts that MCI and AT&T are in error in arguing that the refund is appropriate in this case to the extent such refund should be applied to the Sprint operating telephone companies. Pursuant to the clear language of Section 204(a)(2)(A) of the Act and the equities of the particular facts presented, such a result is not warranted.

## **II. ARGUMENT**

MCI and AT&T assert that the Commission is empowered pursuant to Section 204(a)(1) of the Act to require carriers to refund, with interest, such portion of a charge for a new service or revised charges as by its decision the Commission has found not to be justified. Both assert that, in the instant case, the Commission should require carriers to make a one time reduction in other rates through a reduction in price cap indices ("PCI") reflecting the full amount of costs included in the PCI during the period the 800 data base tariffs were in effect and subject to refund. In doing so, however, ATT and MCI have failed to address the expressed limitation in the Act as to the applicability of the refund mechanism to the Sprint operating companies in the instant case.

In the Suspension Order, with respect to the Sprint Operating Companies, formerly the United Operating Telephone Companies,<sup>4</sup> the Commission specifically suspended only that portion of the rates for the Sprint operating companies that exceeded .0067 cents per query.<sup>5</sup> The rates for the Sprint operating companies have not exceeded this ceiling since the amended tariffs

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<sup>3</sup> 47 U.S.C. § 204(a)(1)

<sup>4</sup> The United Operating Telephone Companies are the same companies as the Sprint Operating Telephone Companies.

<sup>5</sup> Suspension Order, ordering para. 31. See also, Report and Order, para. 12.

were filed.<sup>6</sup> Thus, the rates in effect for the period in question were never suspended and subject to an accounting order. It has been clearly established that the Commission has no power to retroactively alter filed rates absent compliance with suspension procedures of Section 204 of the Act, governing suspension pending hearing on new charges or revisions to existing charges.<sup>7</sup> In this case, with respect to the rate for the Sprint operating companies, the Commission investigated and remedied an unreasonable rate which it had permitted to become fully effective without suspension order. As the Court noted in Illinois Bell, in doing so the Commission acts under Section 205 of the Act, authorizing prospective prescription of just and reasonable charges, and not under Section 204. The Commission has no authority under Section 205 to order refunds contemplated only under Section 204.

Given the fact that this proceeding been extended for such a lengthy period of time (three and one-half years), it would be patently unfair to attempt to require carriers to reconcile what has happened in the manner proposed by MCI and AT&T. Although simplistic in its approach, such a mechanism serves more as a penalty than as an attempt to comply with the original Suspension Order or the statutory requirements under Section 204(a)(1 ).

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<sup>6</sup> Tariffs were filed by Transmittal No. 320 on April 29, 1993 by the United Operating Telephone Companies and were effective May 1, 1993.

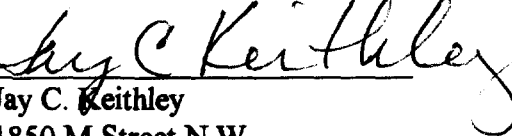
<sup>7</sup> Illinois Bell Telephone Company, et al., v Federal Communications Commission, 966 F.2d 1478 (D.C. Cir. 1992) ("Illinois Bell Order").

### III. CONCLUSION.

Sprint respectfully submits that the Petitions for Reconsideration of AT&T and MCI are without merit from a legal and equitable basis and should be denied.

Respectfully submitted,

SPRINT CORPORATION

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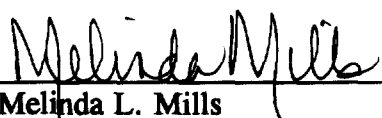
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December 12, 1996

## **CERTIFICATE OF SERVICE**

I, Melinda L. Mills, hereby certify that I have on this 12<sup>th</sup> day of December, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments to Petitions for Reconsideration" of Sprint Corporation in the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, CC Docket No. 93-129, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

  
\_\_\_\_\_  
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